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Message Text

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EA/ISM - MR. KENNEY
EB/IFO/OMA - MR. MINNIES (DRAFT)
---------- 020493
R 071530Z OCT 75
FM SECSTATE WASHDC
TO AMEMBASSY JAKARTA

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E.O. 11652: N/A
TAGS: EFIN, ID
SUBJECT: US-INDONESIA DRAFT INCOME TAX CONVENTION
REF: (A) JAKARTA 11100; (B) STATE 203042

1. WE PREFER PROPOSAL IN PARA 3 OF REF (B) TO LANGUAGE SUGGESTED IN PARA 2 OF REF (A). FORMER, WITH EXPLICIT REFERENCE TO "OFFSHORE ACTIVITIES", CLARIFIES INTENDED SIGNIFICANCE OF NEW PARA. LATTER, WHICH IS A GOOD EFFORT, COULD BE MISREAD AS A LIMITATION ON TAXING JURISDICTION RATHER THAN AN EXPANSION. MOREOVER, IT COULD RAISE MINOR TECHNICAL QUESTIONS CONCERNING INCOME TAX JURISDICTION OVER RESIDENTS OF EACH STATE AND US OBLIGATION TO GRANT A FOREIGN TAX CREDIT. DRAWING ON YOUR PROPOSAL, WE SUGGEST FOLLOWING TWO ALTERNATIVES:

(A) "(C) THE USE OF THE TERMS REFERRED TO IN SUB-PARAGRAPHS A AND B IN A GEOGRAPHICAL SENSE SHALL HAVE THE EFFECT OF EMBRACING IN THE INCOME TAX JURISDICTION OF THE
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RESPECTIVE CONTRACTING STATES THOSE OFFSHORE ACTIVITIES

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WHICH ARE SUBJECT TO SUCH JURISDICTION IN ACCORDANCE WITH INTERNATIONAL LAW." (THIS USES EMBASSY'S APPROACH OF AVOIDING DEFINING INDONESIA AND UNITED STATES TO INCLUDE "ACTIVITIES" BUT INSERTS REFERENCE TO OFFSHORE.)

(B) "(C) THE USE OF THE TERMS REFERRED TO IN SUBPARAGRAPHS A AND B IN A GEOGRAPHICAL SENSE SHALL HAVE THE EFFECT OF EMBRACING IN THE INCOME TAX JURISDICTION OF THE RESPEC-

TIVE CONTRACTING STATES THOSE ACTIVITIES OUTSIDE THE LAND TERRITORY OF THE RESPECTIVE CONTRACTING STATES WHICH ARE SUBJECT TO SUCH JURISDICTION IN ACCORDANCE WITH INTERNATIONAL LAW." (THIS FORMULATION AGAIN USES EMBASSY'S BASIC APPROACH, BUT INSTEAD OF INSERTING "OFFSHORE" INSERTS PHRASE "OUTSIDE THE LAND TERRITORY OF THE RESPECTIVE CONTRACTING STATES".)

2. IN SEEKING SOLUTION, WE SUGGEST EMBASSY FIRST PROPOSE TO INDONESIANS LANGUAGE CONTAINED PARA 3 OF REF (B). IF NOT ACCEPTA3LE TO INDONESIANS, EMBASSY IS AUTHORIZED TO PROPOSE BOTH ALTERNATIVES IN ABOVE PARAGRAPH. IN ADDITION, IF IN YOUR JUDGMENT IT IS NECESSARY IN ORDER TO ACHIEVE AGREEMENT, YOU MAY PROPOSE LANGUAGE IN PARA 2 OF REF (A).

3. ORDER OF DEFINITIONS IS NOT MATERIAL AND THERE WOULD BE NO NEED TO SWITCH PLACEMENT OF SUBPARAGRAPHS.

4. READING CONTAINED PARA 3 OF REF (A) IS CORRECT.

5. WITH REGARD TO PARA 3(1)(A), WE UNABLE TO AGREE TO PROPOSAL IN PARA 4 OF REF (A). WE NEED TO RETAIN SECOND SENTENCE OF PARA 3(1)(A) BECAUSE FOR MOST PURPOSES WE ARE COVERING ONLY STATES AND D.C., NOT U.S. TERRITORIES AND DEPENDENCIES (E.G., PUERTO RICO). NON-PARALLELED DEFINITIONS CAUSE US NO PROBLEM, AND WE WOULD NOT EXPECT THIS TO BE A PROBLEM TO INDONESIANS SINCE THEY DO NOT NEED TO EXCLUDE POSSESSIONS AS WE DO. KISSINGER

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